
(2006) 02 GAU CK 0022
In the Gauhati High Court
Case No : WP (C) No. 8802 of 2005

Ganesh Electric Stores

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 20-02-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 406, 420, 467, 468

Citation : (2006) 2 GLR 437 : (2006) GLT 619 Supp

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : A.B. Choudhury, H. Hoque, S.A. Choudhury, S.K. Sarkar and D. Phookan, for the Appellant; S. Saikia, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—The refusal of the respondents to allow the petitioner to participate in the tender process pursuant to a NIT issued for works relating to external electrification of the new Central Jail at Sarusajai is the subject-matter of challenge in the present writ petition.

2. The facts in brief may be noticed at the outset.

A NIT was published on 3.12.2005 in all leading newspapers of the State inviting bids for the work of electrification in the premises of the new Central Jail at Sarusajai which is presently under construction. In terms of the NIT issued, applications for the bid documents were required to be submitted to the Additional Chief Engineer, P.W.D. (Electrical) on or before 9.12.2005. The NIT dated 3.12.2005 contemplated a pre-bid meeting to be held on 16.12.2005 for purposes of clarification, if any, that may be sought by intending tenderers submission of the bids on or before 20.12.2005 and the opening of the bids received on the same date at 14.15 hours in presence of the bidders or their authorised representatives.

The petitioner applied in writing for a set of bid documents on the date of the

issuance of the tender notice itself, i.e., 3.12.2005. The additional Chief Engineer, P.W.D. (Electrical) by his letter dated 8.12.2005 informed the petitioner that as two police cases, namely, Chandmari P.S. Case No. 293/2005 and Chandmari P.S. Case No. 302/2005 have been registered against the petitioner, the Government of Assam in the Public Works Department had taken a decision not to issue any tender papers or work order to the petitioner-firm until finalisation of the cases. Admittedly and evidently the said decision was taken without issuing any notice or giving any opportunity to the petitioner. The petitioner unsuccessfully tried to persuade the authority to alter its stand in the matter and having failed to do so, has instituted the present writ proceeding calling into question the decision of the respondents not to issue any tender papers to the petitioner and for an appropriate direction to that effect.

3. In the pleadings contained in the writ petition read with the documents appended thereto, the writ petitioner has stated that Chandmari P.S. Case No. 293/2005 and Chandmari P.S. Case No. 302/ 2005 have been registered against the petitioner on an allegation of submission of false/fabricated National Savings Certificates of Rs. 82,000, 90,000 and 97,000 (totalling Rs. 2,69,000) in respect of the tenders submitted by the petitioner for electrification works of the 100 Bedded Hospital at Sonari, Tinsukia Jail and the proposed additional building of the Gauhati High Court. According to the petitioner, he had paid the value of the NSCs submitted by him in connection with the aforesaid works to one Bhadra Baruah who is a Junior Engineer in the department and who was entrusted with the task of obtaining the NSCs from the post office. However, the aforesaid Bhadra Baruah along with some officers of the Department including the respondent No. 3, i.e., the Additional Chief Engineer, P.W.D. (Electrical), Assam, entered into a criminal conspiracy to involve the petitioner in a false and fabricated case, which the petitioner contends was done to further the interest of the competitors of the petitioner who are the blue eyed contractors of the Department. The said stand of the petitioner is apparent from a F.I.R. filed by the petitioner, again, with the Chandmari Police Station on 8.10.2005. It must be noticed at this stage that on the basis of the aforesaid F.I.R. dated 8.10.2005, Chandmari P.S. Case No. 340/2005 under Sections 120(B)/406/420/467/468, IPC has been registered. In the above facts, the case projected in the writ petition is that the order dated 8.12.2005 passed by the respondent No. 3 refusing to furnish to the petitioner-firm the tender papers pursuant to the NIT dated 3.12.2005 amounts to blacklisting the petitioner-firm which action could not have been resorted to. by the respondents without giving the petitioner-firm an opportunity. As no such opportunity was granted, the actions of the authority, as aforesaid, have been contended to be in violation of the principles of natural justice. In the writ petition filed, the petitioner has also sought to make out a case of mala fide on the part of the respondent No. 3 who being one of the accused persons in Chandmari P.S. Case No. 340/2005 registered on the basis of the F.I.R. dated 8.10.2005 filed by the petitioner, it is contended that the said respondent No. 3 was actuated by bias and mala fide intent in taking the decision

not to issue any tender papers to the petitioner-firm.

4. The respondents have filed an affidavit in the case through the Additional Chief Engineer, P.W.D. (Electrical), i.e., respondent No. 3. In the affidavit filed the stand taken is that in response to separate NITs issued earlier for electrification works of the newly constructed 100 Bedded Hospital at Sonari, Tinsukia Jail and the proposed additional court building of the Gauhati High Court, the petitioner had submitted tenders accompanied by the stipulated amount of bid security in the form of NSCs. The amount covered by the NSCs submitted by the petitioner for the works in the District Jail, Tinsukia, is stated to be of the value of Rs. 90,000 whereas the value of the NSCs submitted for the works relating to the 100 bedded Hospital at Sonari and the additional court building of the Gauhati High Court is stated to be of Rs. 82,000 and 97,000 respectively. The respondents, in the affidavit filed, have further stated that the authenticity and genuineness of the NSCs submitted by the petitioner pursuant to the tenders issued for the works in the District Jail, Tinsukia and the 100 Bedded Hospital at Sonari were enquired by the Department from the office of the Senior Postmaster, Guwahati G.P.O from which G.P.O. the NSCs were shown to have been issued. The Senior Postmaster, Guwahati G.P.O. by letter dated 9.8.2005 informed the concerned Executive Engineer of the Department that the NSCs submitted by the petitioner are not genuine and that none of the said certificates have been issued by the Guwahati G.P.O. Similarly, the NSCs of the value of Rs. 97,000 submitted by the petitioner in connection with the electrification works of the proposed additional building of the Gauhati High Court were verified from the same authority, i.e., the Senior Postmaster, Guwahati G.P.O., who by his letter dated 3.9.2005 informed the Department that none of the NSCs submitted by the petitioner were genuine and were issued by the Guwahati G.P.O. In the affidavit filed, the respondents have further stated that pursuant to the directions issued by the Deputy Secretary to the Government of Assam, P.W.D., the respondent No. 3 had lodged the FI.Rs. in the Chandmari Police Station on the basis of which Chandmari P.S. Case No. 293/2005 and Chandmari PS. Case No. 302/ 2005 have been registered. It is further stated, in the affidavit filed, that the Deputy Secretary to the Government of Assam, P.W.D., by a letter dated 4.10.2005 had directed the Chief Engineer, P.W.D. (Building) to further verify the matter from the Senior Superintendent of Post Offices, Guwahati and till the matter is finalized not to issue any tender papers or work orders to the petitioner. The stand of the respondent No. 3 not to issue any tender papers to the petitioner pursuant to the NIT dated 3.12.2005 is stated to be on the aforesaid basis. In the affidavit filed, the respondents have further stated that the matter had been further verified from the Senior Superintendent of Post Offices, Guwahati which authority by letter dated 27.12.2005" has once again reiterated the fact that none of the NSC submitted by the petitioner were genuine. In the affidavit filed it has also been stated that all the NSCs submitted by the petitioner have since been seized by the police in connection with the police cases registered, as noticed above. The actions of the respondents in not

issuing tender papers to the petitioner pursuant to the NIT dated 3.12.2005 has been sought to be justified on the above basis.

5. I have heard Sri A. B. Choudhury, learned senior counsel, appearing for the writ petitioner and Sri S. Saikia, learned Counsel appearing for the respondents.

6. The argument advanced on behalf of the petitioner has been short and precise. The order dated 8.12.2005 of the respondent No. 3 though does not specifically contemplate the black-listing of the petitioner firm, the decision conveyed by the aforesaid order/letter dated 8.12.2005, according to the petitioner, is clear and specific. Until the allegations levelled against the petitioner-firm in the two police cases in question is adequately cleared, no tender papers or work order is to be issued in favour of the petitioner. The effect of the order/communication dated 8.12.2005, according to the learned Counsel for the petitioner, has serious adverse consequences inasmuch as the petitioner has been virtually debarred from participating in any tender to be issued by the Department, until finalisation of the cases. Learned Counsel for the petitioner, therefore, contends that the order dated 8.12.2005 is, in effect, an order blacklisting the petitioner-firm. Learned Counsel for the petitioner by relying on the averments made in the writ petition and the enclosures thereto, particularly the F.I.R. filed by the petitioner on 8.10.2005 (Annexure-8 to the writ petition) has contended that the petitioner has a cogent explanation in respect of the allegations levelled against him. As the impugned order dated 8.12.2005 was passed without hearing the petitioner and without consideration of the explanations which could have been reasonably and legitimately advanced by the petitioner, this Court must hold the said order dated 8.12.2005 to be in violation of the principles of natural justice. Reliance in this regard has been placed on the Supreme Court judgment in the case of *M/s. Erusian Equipment & Chemicals Ltd. v. State of West Bengal and Anr.* reported in AIR 1975 SC 26.

7. Controverting the submissions advanced on behalf of the petitioner Mr. Saikia, learned Counsel for the respondents, has submitted that the order dated 8.12.2005 issued by the respondent No. 3 was pursuant to the decision taken at the Government level which was communicated to the Chief Engineer, P.W.D. (Buildings) by the Deputy Secretary to the Government of Assam, P.W.D. by letter dated 4th October, 2005 (Annexure-H to the affidavit of the respondents). According to Sri Saikia, the genuineness and authenticity of the NSCs submitted by the petitioner in connection with other contract works were verified from the competent authority in the Guwahati G.P.O. from which Post Office the NSCs were shown to have been issued. The authority in the Guwahati G.P.O. after a detailed enquiry in the matter had informed the department that none of the NSCs submitted by the petitioner were found to be genuine or issued by the Guwahati G.P.O. In such a situation, on the strength of the directions issued from the Government, the F.I.Rs. leading to the registration of the Chandmari P.S. Case No. 293/2005 and Chandmari P.S. Case No. 302/2005 were filed. Furthermore, in view of the nature of the allegations levelled against the

petitioner, which were prima facie found to be correct on the basis of the enquiry held in the Guwahati G.P.O., a decision was taken at the Government level not to issue any tender papers or work order to the petitioner. The said decision was duly communicated to the Chief Engineer, P.W.D. (Buildings) by the Deputy Secretary to the Government of Assam, P.W.D. by letter dated 4.10.2005 (Annexure-H to the respondents affidavit) whereafter the impugned order dated 8.12.2005 was issued to the petitioner. Sri Saikia, learned Counsel for the respondents, has contended that the facts of the case would amply demonstrate that the impugned order dated 8.12.2005 was passed in larger public interest and for good and sufficient reasons and, therefore, the said order dated 8.12.2005 should not receive any interference at the hands of the Court.

8. A consideration of the arguments advanced on behalf of the contesting parties would go to show that the primary question that the Court has to deal with in the facts of the present case is whether the impugned order dated 8.12.2005, though passed without hearing the petitioner and without giving any opportunity to the petitioner, can be sustained in law.

9. Law will reach its most glorious moment when "men" can be made wholly free from the shackles of arbitrary and despotic power, however, subtle the exercise of such power may be. Natural justice, in all its facets, has proved to be an effective mode of conveyance for the law to reach the aforesaid stage. It is a doctrine evolved by the Courts by a long process of evolution not only to secure the ends of justice but also to prevent miscarriage of justice. It has its origins in the concept of natural rights that man is acknowledged to possess by virtue of being a living creature as distinguished from constitutional, legal and statutory rights. The doctrine implies inborn sense of fairness that must guide the actions of man versus man and State versus man. Such natural rights exist and the potent weapon for its protection, which finds expression in the different facets of natural justice, continues, notwithstanding the various manifestations of constitutional, statutory and other legal rights and duties cast upon citizens and the State. That is precisely why the doctrine is not capable of an exact definition and Courts have left its application to be decided in the totality of the facts of the particular case that may present itself before the Court. However, over the years, two basic principles have been recognised as fundamental in the doctrine of natural justice. The first is "nemo iudex in causa sua", that is, "no man shall be a judge in his own case"; the second is "audi alteram partem" ; that is, "hear the other side". "A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely, "qui aliquid statuerit, parte inaudita altera acquum licet dixerit, haud acquumfecerit" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" [para 21 (2003) 4 SCC 573] . With the passage of time exceptions in the practical application of the above two principles of natural justice have also come to be evolved by the Courts as evolution of such principles became imminent in order to maintain the balance of the needs of the administration and the natural rights of the citizens to be

protected by adherence to the principles of natural justice. A recent development which constitutes a departure from the principle of "aude altarem partem" is what has been coined as the "useless formality theory". The aforesaid exception has been carved out to require the Courts not to insist on compliance with the principles of natural justice in a situation where even after such compliance the end result would be no different. The aforesaid exception found approval of the Apex Court which had applied the same in the case of Aligarh Muslim University and Others Vs. Mansoor Ali Khan, as well as in the case Canara Bank and Others Vs. Shri Debasis Das and Others, . A note of caution has been, however, struck by the Apex Court in The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others, wherein it has been held that the application of the theory must be only after exercise of the greatest care and caution. However, the principle which is deducible from the law laid down by the Apex Court in the case is that while the Courts should not insist on the requirement of opportunity of hearing the affected person as a mere ritual, the above requirement ought to be insisted upon in all appropriate cases keeping in mind that the task of taking or refraining from a particular line of decision is primarily on the administrator and it is normally not for the Court to visualise as to how the administrator would have reacted had the effected person been given an opportunity to state his version of the case.

10. The above principles of law may now be applied to the facts of the present case. The order dated 8.12.2005 does not specifically blacklist the petitioner firm; yet, as a decision has been taken not to issue any tender papers or any work orders to the petitioner firm, this Court cannot but conclude that the order dated 8.12.2005, in fact, blacklists the petitioner firm. Such a course of action could not have been adopted by the respondents without hearing the petitioner as had been held by the Apex Court as far back as in the year 1975 in the case of M/s. Erusian Equipment & Chemicals Ltd. (supra). The arguments advanced by Sri Saikia, learned departmental counsel, is to the effect that as the petitioner has been debarred from participating in the tender process on account of pendency of two criminal cases registered against him, which facts are not in dispute, opportunity or hearing was not required. It is to examine the acceptance of the above contention advanced that this Court had delved into the discussions made in the preceding paragraphs. The petitioner in the pleadings made before this Court had offered certain explanations with regard to the circumstances in which the NSCs, alleged to be false and fabricated documents, were obtained by him. The petitioner had also filed a counter-case against some departmental officials including the respondent No. 3 by filing a P.I.R. dated 8.10.2.005 (Annexure-8 to the writ petition). In such circumstances, whether the respondent No. 3 should have participated in the decision making process is a question that should have been decided only after hearing the writ petitioner. Furthermore, the petitioner had certain explanations to offer with regard to submission of the NSCs in question. Whether such explanations, if placed before the respondents, would have had any significant role in altering the decision and

if so in what manner are questions for the administrator to decide. It is not for the Court to speculate as to whether such explanations could have moved the decision maker to take a course of action other than what was in his mind and what was proposed. This is where adherence to the principles of natural justice by giving the petitioner an opportunity of hearing would have its role to play in ensuring a decision guided by reasonableness and fairness. An ideal administrative decision, undoubtedly, is one which reflects a view-point reached after hearing all affected parties and after taking into account all possible relevant facts and circumstances. This is the specific area where the Court must express its disagreement with the instant decision making process leading to what was conveyed to the petitioner by the letter dated 8.12.2005 that he should be debarred from being furnished with any tender papers or any work order.

11. For the aforesaid reasons this Court is of the view that it would be in consonance with the spirit in which the doctrine of natural justice has developed in this country to hold that the order dated 8.12.2005 debarring the petitioner is a retrograde step. The aforesaid decision, therefore, is being interfered with. The natural consequence of the interference made by this Court would now require the petitioner to be heard before the authority takes any fresh/further decision as to whether the petitioner should be allowed to participate in the tender process pursuant to the NIT dated 3.12.2005.

The writ petition is accordingly allowed as indicated above.